

ORDINANCE NO. _____-2008

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SECTION 9.5-511 OF THE CODE OF ORDINANCES CONCERNING AMENDMENTS TO THE LAND DEVELOPMENT REGULATIONS, LAND USE DISTRICT MAP AND FUTURE LAND USE MAP; PROVIDING FOR NOTICE; PROVIDING A METHOD OF PROTEST FOR LAND USE DISTRICT MAP AND FUTURE LAND USE MAP CHANGES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE DEPARTMENT OF COMMUNITY AFFAIRS, PROVIDING FOR CODIFICATION AND FOR AN EFFECTIVE DATE.

WHEREAS, there has been a difference of opinion in the interpretation of the protest procedure of Section 9.5-511 of the Monroe County Code concerning redesignations of the land use district map; and

WHEREAS, this matter of interpretation has been the source of litigation which, even if adjudicated or settled, will not result in a codified change to the regulations; and

WHEREAS, changes to the Land Use District Map (zoning) occur after the changes to the Future Land Use Map and thus there should be a method to protest the FLUM amendment prior to a change being made to the Land Use District Map;

NOW, THEREFORE, BE IT ORDAINED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS:

Section 1. Section 9.5-511 of the Monroe County Code is amended as follows:

Sec. 9.5-511. Amendments to this chapter and to the Future Land Use Map.

(a) *Purpose:* The purpose of this article is to provide a means for changing the text of this chapter, which also includes changes to the land use district map. It is also intended to add to the statutory procedures and requirements for changing the Future Land Use Map (FLUM). It is not intended to relieve particular hardships, nor to confer special privileges or rights on any person, nor to permit a an adverse change in community character, as determined by the findings of the board of county commissioners, analyzed in volume I of the plan., ~~but only to make necessary adjustments in light of changed conditions.~~ In determining whether to grant a requested amendment, the board of county commissioners shall consider, in addition to the factors set forth in this article, the consistency of the proposed amendment with the provisions and intent of the plan.

(b) *Authority:* The board of county commissioners may amend the text of this chapter upon the compliance with the provisions of this article. Amendments may be proposed by the board of county commissioners, the planning commission, the director of planning, or the owner or other person having a contractual interest in property to be affected by a proposed amendment or FLUM change. The director of planning shall have the responsibility to establish the format as approved by the board of county commissioners by which applications can be submitted and shall have the authority to screen those amendments, processing only those which are presented on a complete application; ~~and t~~ Those deemed insufficient shall be returned within 30 days to the applicant for correction and re-submittal. ~~within twenty one (21) days.~~ FLUM changes shall be processed prior to any application being made to amend the land use district map.

(c) *Timing:* Applications for map and text amendments to this chapter shall be accepted at any time. The planning director shall review and process the map and text amendment applications as

they are received and pass them on to the development review committee and the planning commission for recommendation and final approval by the board of county commissioners.

(d) *Procedures:*

(1) *Proposals by Board of County Commissioners, Planning Commission or Director of Planning:* Proposals for amendments by the board of county commissioners, the planning commission or the director of planning shall be transmitted to the planning department and the development review committee for review and comment. ~~and recommendation to the planning commission.~~ Staff shall make a recommendation to the planning commission.

(2) *Proposals by Affected Landowners:* Any landowner or other person having a contractual interest in property desiring to petition the board of county commissioners for an amendment to the land use district map or FLUM shall be required to file an application with the director of planning accompanied by a nonrefundable application fee as established from time to time by the board of county commissioners to defray the actual cost of processing the application ~~[see section 9.5-522].~~ The director of planning shall transmit the proposed amendment to the planning department and the development review committee for review and comment. ~~preparation of a recommendation to the planning commission.~~ Staff shall make a recommendation to the planning commission.

(3) *Public Hearing(s):* The planning commission and the board of county commissioners shall each hold at least one (1) public hearing on a proposed amendment to the text of this chapter or to the land use district map and FLUM.

a. *Advertised and Mailed Notice:* Notice of the public hearings for a proposed amendment to the text of this chapter, ~~which also includes changes to the land use district map and FLUM~~ shall be provided as required by section 9.5-45 of this Code. Proposed FLUM changes shall be advertised in the same manner as the land use district map. In addition, notice of changes to the land use district

map and FLUM shall be mailed to owners within three hundred (300) feet of the affected property thirty days prior to the required hearing before the planning commission and the board of county commissioners. A list of owners as shown by the latest available records from the Property Appraiser's office shall be provided by an applicant with the application.

b. *Posting of notice:* Posting of notice shall be made in accordance with the requirements of section 9.5-45.

c. *Other notice:* Notice of all public hearings shall be posted on the Monroe County Website as soon as is practical. Failure to post notice on the Monroe County Website shall not constitute grounds for the cancellation of any public hearing nor shall it constitute grounds for the cancellation of any action taken by a board at such a meeting.

(4) *Action by Planning Commission:* The planning commission shall review the application, the reports and recommendations of the department of planning, the comments of the development review committee, and the testimony given at the public hearing, and shall submit its recommendations and findings to the board of county commissioners.

(5) *Action by Board of County Commissioners Following Public Hearing(s):*

a. The board of county commissioners shall consider the staff report and recommendation of the Planning Commission and the testimony given at the public hearings.

b. The board of county commissioners may consider the adoption of an ordinance enacting the proposed change based on one (1) or more of the following factors:

(i) Changed projections (e.g., regarding public service needs) from those on which the text or boundary was based;

(ii) Changed assumptions (e.g., regarding demographic trends);

(iii) Data errors, including errors in mapping, vegetative types and natural features described in volume 1 of the plan;

(iv) New issues;

(v) Recognition of a need for additional detail or comprehensiveness; or

(vi) Data updates;

(vii) For FLUM changes, the principles for guiding development as defined in the Florida statutes relating to changes to the comprehensive plan.

~~c. however, in~~ In no event shall an amendment be approved which will result in an adverse community change of the planning area in which the proposed development is located or to any area in accordance with a Liveable Communities Master Plan.

~~e.~~ (6) Protest Procedure

a. A written protest concerning an application for an amendment to the land use district map or a FLUM amendment may be filed before the BOCC hearings by the owners of no less than twenty (20) percent of the area of the land to be affected. In addition, a written protest may be filed by owners of land within two hundred (200) feet of the affected property. Protests for a FLUM amendment may be made at the transmittal hearing and at the adoption hearing.

b. Such protest must be by notarized statement from each individual owner, on a form available from the county with the name, address, parcel real estate number, home address and telephone number. In the event of ownership by multiple parties, only one owner is required to file a protest. Condominium, cooperative, or statutory time share program owners may file protests as individuals and shall be counted in the number of owners to calculate the twenty percent.

c. The originals of the written protests must be filed with the Clerk of the board at least forty-eight hours before the start of the first County Commission meeting at which the public hearing on the

land use district map amendments will be heard, and at least three working days before the day of the initial hearing for a FLUM transmittal or FLUM adoption. Upon receipt, the Clerk shall furnish a copy to the County Attorney, the County Administrator, and to the applicant requesting the amendment. No further protests will be accepted by the Clerk or the board.

d. The board shall not vote until the signatures, ownership, and protests have been verified by the Growth Management Division and County Attorney using information from the Property Appraiser and in the official records of Monroe County available as of the date received by the Clerk. Every reasonable means shall be used by county staff to resolve the validity of the protest by the time of the public hearing, but if this cannot be accomplished the board shall continue the item.

e. The area used as right of way for U.S. 1 shall not be included in any calculations for number of owners or percentage of ownership, but shall be included in the distance calculation from the affected property. In the event of a written protest against such amendment by owners of twenty (20) percent of the affected property or twenty (20) per cent of the owners within 200 feet of the affected property, where the signatures and protest are found to be true and accurate, the amendment shall not become effective except by the favorable vote of four (4) members of the board of county commissioners. Rounding up of decimals and percentages shall not be permitted.

f. Protests shall not be considered unless received as prescribed above. Any owner may withdraw a protest up until the conclusion of the public hearing at which the item will be heard. In the event of a written protest against such amendment signed by the owners of twenty (20) percent or more either of the area of the lots or land included in the proposed amendment or of the lots or land immediately adjoining the property to be affected and extending two hundred (200) feet therefrom, such amendment shall not become effective except by the favorable vote of four (4) members of the board of county commissioners.

(7) Majority of Board. Except as provided in paragraph (c) above, the board of county commissioners may adopt the proposed amendment or the proposed amendment as modified by not less than a majority of its total membership.

(e) *Typographical or Drafting Errors:* Amendments to the text to correct typographical or drafting errors may be adopted by the board of county commissioners without posted notice or public hearing at any regular meeting. As long as the county is within an area of critical state concern, notice of such amendments shall be transmitted to the Florida Department of Community Affairs within thirty (30) days.

Section 2. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence, or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 3. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state, or County law, rule code or regulation, the more restrictive shall apply.

Meeting date: October 8, 2008

Section 4. Transmittal.

This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

Section 5. Filing.

This ordinance shall be filed in the Office of the Secretary of the State of Florida but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving the ordinance.

Section 6. Codification. This ordinance shall be transmitted to Municipal Code Corporation for inclusion in the Monroe County Code.

Section 7. Effective Date. This ordinance shall become effective as provided by law and stated above.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ of _____ 2008.

Mayor Mario DiGennaro _____

Mayor Pro Tem Charles McCoy _____

Commissioner Sylvia Murphy _____

Commissioner George Neugent _____

Commissioner Dixie Spehar _____

(SEAL)

BOARD OF COUNTY COMMISSIONERS

Attest: DANNY L. KOLHAGE, CLERK

OF MONROE COUNTY, FLORIDA

By _____

By _____

Deputy Clerk

Mayor/Chairperson

Meeting date: October 8, 2008